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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16.10.2023

(15)+ MAC.APP. 1012/2016 & CM APPL. 44537/2016

(16)+ MAC.APP. 1013/2016 & CM APPL. 44539/2016

NATIONAL INSURANCE CO LTD

.... Appellant

Through: Mr.Zorawar Singh, Mr.Hitesh
Mankar, Adv.

versus

LRS OF LOKESH SHARMA & ORS

..... Respondents

LRS OF KAPIL SHARMA & ORS

..... Respondents

Through: Mr.Prateek Chadha, Mr.Vijay
Wadhwa, Mr.Sreekar Aechuri, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These appeals have been filed by the appellant challenging the Award dated 31.08.2016 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-02, West, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in Petition No. 76919/2016 (Old No. 621/2013), titled ***Smt. Anita Sharma & Ors. v. Rahul Gupta & Ors.***; and Petition No. 76920/2016 (Old No. 622/2013), titled ***Priti Sharma & Ors. v. Rahul Gupta & Ors.***

2. As both the appeals have been filed by the Insurance Company, against the common Award and raise common challenge, they are being





disposed by way of this common judgement.

3. It was the case of the claimants, that is, the Legal Representatives of both, Lokesh Sharma (hereinafter referred to as 'deceased no.1') and Kapil Sharma (hereinafter referred to as 'deceased no.2'), before the learned Tribunal that on 20.01.2013 at about 09.15 pm both the deceased no.1 and 2 were travelling on a motorcycle bearing registration no. DL-4S-ND-9030, which was driven by deceased no.2 and the deceased no.1 was sitting as the pillion rider. When they reached the Main Rohtak Road, *Ghevra More* (Turn), Delhi, they were hit by a Santro car bearing registration No. DL-4G-J-6207 (hereinafter referred to as the 'Offending Vehicle') being driven by Mr. Rahul Gupta, that is the respondent no.5 in both appeals, in a rash and negligent manner. As a result of the said accident, they both lost their lives.

4. The learned Tribunal by way of the Impugned Award found that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner. The learned Tribunal thereafter proceeded to award compensation in favour of the claimants.

5. The appellant challenges the Impugned Award on the following two grounds-

I. On the involvement of the Offending Vehicle in the above-mentioned accident and;

II. On the quantum of compensation awarded.

Submissions by the learned counsel for the appellant

6. The learned counsel for the appellant submits that the involvement of the Offending Vehicle in the accident itself has not been proved by the claimants. He submits that this was a case of hit and run and the Offending Vehicle has been only later falsely implicated in the accident. He submits





that the First Information Report (in short, 'FIR') No.13 dated 21.01.2013, registered at Police Station Mundka, records that, Assistant Sub-Inspector (in short 'ASI') Avdesh Kumar along with a Constable went to the spot of the accident, where they found above-mentioned motorcycle in the accidental condition. They, however, did not find any eye-witness(s) to the accident at the accident spot or at the hospital. He submits that later Mr. Ravinder Sharma (PW-5) sprung up as an eye-witness to the accident. He submits that the statement of PW-5 cannot be relied upon, not only for the reason that he was not named in the FIR, but also because he admits that even after witnessing the accident, he went home rather than reporting the accident to the police. He submits that, therefore, the learned Tribunal has erred in relying upon the statement of PW-5 to reach its finding that the Offending Vehicle has caused the accident being driven in a rash and negligent manner.

7. The learned counsel for the appellant submits that the learned Tribunal has based its finding on conjectures and surmises, rather on the evidence before it. He submits that the learned Tribunal states that it is a matter of common knowledge that people in cities like Delhi will generally not wait for the police to arrive to make a statement, if they happen to have witnessed a crime. He submits that there is no material on record for arriving at such an opinion.

8. On the question of quantification of compensation, the learned counsel for the appellant submits that as far as the deceased no.1 is concerned, in the Claim Petition, it had been asserted that he was aged about 28 years at the time of the accident. He submits that in spite of such assertion, the learned Tribunal, relying on the Intermediate Examination





Certificate-cum-Marksheet, which mentioned the date of birth of the deceased no. 1 as 13.01.1990, took the age of the deceased as 23 years and accordingly applied the multiplier of 18. He submits that if the age of the deceased was considered to be 28 years, in terms of the judgment of the Supreme Court in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the multiplier of 17 would have become applicable.

9. He further submits that the learned Tribunal has erred in taking into account the future increase of income as 50%. He submits that in the present case, there was no proof of the income of the deceased.

10. As far as the compensation amount on non-pecuniary heads is concerned, he submits that the compensation awarded towards the funeral expenses, loss of estate, and loss of consortium was not in accordance with the judgment of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors.*, (2017) 16 SCC 680. He submits that the compensation towards loss of estate cannot be granted in terms of the said judgment.

Submissions by the learned counsel for the claimants

11. On the other hand, the learned counsel for the claimants in both the appeals, submits that the driver of the Offending Vehicle, that is respondent no.5 herein, in his written statement had admitted that the accident has been caused by him. Though he set up a case that the accident occurred due to the motorcycle being driven in a rash and negligent manner, he never appeared as a witness before the learned Tribunal in the Claim Petition(s).

12. He submits that as far as the owner of the Offending Vehicle is concerned, he also admitted that on the date of the accident, the vehicle was being driven by the named driver of the Offending Vehicle. He, however,





could not depose of the manner in which the accident had taken place.

13. He submits that, as far as the appellant herein is concerned, in its written statement there was only a vague denial of the manner of the accident and the involvement of the Offending Vehicle in the accident. He further submits that the appellant took no steps to examine the driver of the Offending Vehicle and, in fact, adopted the cross-examination of the eye-witness to the accident, PW-5, conducted by the learned counsel of the owner of the Offending Vehicle. He contends that the appellant did not also cross-examine the owner of the Offending Vehicle, nor produced any other witness to disprove the case of the Claimants.

14. He submits that therefore, the appellant cannot now deny the involvement of the Offending Vehicle or the manner of the accident, as the driver and the owner of the Offending Vehicle are not in appeal against the said finding of the learned Tribunal.

15. On the question of quantification of compensation, the learned counsel for the claimants, with respect to deceased no.1, fairly admits that the learned Tribunal has erred in taking the age of the deceased no.1 as 23 years. He submits that the deceased no.1 was of the age of 28 years at the time of the accident and accordingly the multiplier of 17 is to be applied.

16. On the award of future prospects, he submits that the income of the deceased no.1 had been duly proved before the learned Tribunal. He submits that in terms of the judgment of the Supreme Court in **Pranay Sethi** (supra), therefore, keeping in view the age of the deceased no.1, future prospects of 50% has rightly been added to the income of the deceased no.1.

17. As far as the compensation towards non-pecuniary heads is concerned, the learned counsel for the claimants fairly admits that in terms





of the judgment of the Supreme Court in *Pranay Sethi* (supra), the same needs to be re-determined by this Court.

Analysis and Findings

18. I have considered the submissions made by the learned counsels for the parties.

Involvement of the Offending Vehicle in the accident

19. As far as the involvement of the Offending Vehicle in the accident is concerned, the driver of the Offending Vehicle, respondent no.5 herein, in his written statement admitted that the accident had taken place between the Offending Vehicle and the motorcycle. He, however, pleaded that it was the motorcycle which was being driven in a rash and negligent manner, inasmuch as the deceased no.2, was driving it in a zig-zag manner, in the middle of the road. However, he never stepped in to the witness box and, therefore, the said assertion remained uncorroborated.

20. As far as the owner of the Offending Vehicle- Mr.Harish Kumar, that is the respondent no.6 herein, is concerned, he appeared as R2W1 before the learned Tribunal. He admitted that the Offending Vehicle was given by him to Mr.Rahul Gupta for driving as on the date of the accident. He could not, however, depose about the manner in which the accident took place. He was not cross-examined by the appellant herein before the learned Tribunal.

21. In this regard, it is also relevant to note that the appellant in its written statement before the learned Tribunal had *inter-alia* stated as under:

“1. That if at any stage, it is found that the respondent No.1 and 2 are in collusion and connivance with the petitioners and are not appearing and contesting the petition, in that event the answering respondent No.3 shall be entitled to take all the defenses available to them under Section 170 of the Motor Vehicle Act.”





22. Apart from the above, there was only bare denial of all the contents of the Claim Petitions.

23. That apart, the appellant did not lead any evidence to show that the Offending Vehicle was not involved in the accident nor could it prove that the Offending Vehicle has been falsely implicated in the same. The cause of the accident could also not be disproved by the appellant.

24. In view of the above, the finding of the learned Tribunal that the accident was caused by the Offending Vehicle being driven in rash and negligent manner, stood proved.

25. Further, mere delay of the eye-witness, PW-5, to report the accident to the police cannot be a sufficient ground to cast a doubt on the involvement of the Offending Vehicle in the accident, especially keeping in view the other evidence that had come on record before the learned Tribunal.

26. Accordingly, the first challenge of the appellant to the Impugned Award is rejected.

Multiplier

27. As noted hereinabove, the learned counsel for the claimants has conceded that the age of the deceased no.1 was 28 years as on the date of the accident. In view of the judgment of the Supreme Court in *Sarla Verma* (supra), therefore, the multiplier of 17 has to be applied. The Impugned Award shall stand modified in this extent.

Future Prospects

28. As far as the award of future prospects is concerned, the learned Tribunal in its Impugned Award, for determining the income of the deceased no.1, has relied upon the statement of Mrs. Anita Sharma (PW-1), wife of the deceased no.1, who deposed that the deceased no.1 was working as a Senior





Field Executive in M/s Astute Group and was drawing a salary of Rs.14,000/- per month, inclusive of incentives and was also an Income Tax Assessee.

29. Further, Mr.Sudha Kant Jha (PW-4), System Administrator with the employer of the deceased no.1, produced the salary ledger account of the deceased no. 1 as Ex.PW-4/1. He stated that the deceased no.1 was drawing a monthly salary of Rs.9,500/- and incentives of Rs.2,000/- to Rs.3,000/- per month. Ex.PW-4/1 records the payments made to the deceased no.1 for a period of almost 9 months, and the same was being deposited into the bank account of deceased no.1, thereby proving the salary of the deceased.

30. In *Pranay Sethi* (supra), it has been held that where the deceased had a permanent job and was below the age of 40 years, 50% of his actual salary will be added towards future prospects.

31. In view of the above, no fault can be found with the learned Tribunal adding 50% to the salary of the deceased no.1, towards future prospects. Hence, the challenge of the appellant on this head is rejected.

Non-pecuniary compensation:

32. As far as the non-pecuniary heads are concerned, the learned Tribunal in the two appeals had granted the following compensation, respectively:

MAC.APP. 1012 of 2016

Heads	Amount
Loss of Love & Affection	1,50,000
Funeral Expenses	50,000
Loss of Estate	50,000
Loss of Consortium	1,50,000

**MAC.APP. 1013 of 2016**

Heads	Amount
Loss of Love & Affection	1,50,000
Funeral Expenses	50,000
Loss of Estate	50,000
Loss of Consortium	50,000

33. In ***Pranay Sethi*** (supra), the Supreme Court has with respect to the conventional non-pecuniary heads of compensation, held as under:

“59.8.Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

34. In ***United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur & Ors.***, (2021) 11 SCC 780, it has been explained, that as far as the loss of consortium is concerned, it would be given for ‘filial consortium’, ‘spousal consortium’, and ‘parental consortium’, with each claimant receiving Rs.40,000/-. Accordingly, while no fault can be found in the compensation awarded towards loss of consortium in favour of the claimants, compensation towards funeral expenses and loss of estate shall be reduced to Rs.15,000/- on each of these heads.

35. In addition, the Claimants shall not be entitled to compensation under the head of ‘Loss of Love and Affection’.

Directions

36. In terms of the order(s) dated 30.11.2016 passed by this Court in the present appeals, the appellant had been directed to deposit the entire





awarded amount with interest with the learned Tribunal. As the compensation amount shall now stand reduced, the excess amount deposited by the appellant, if any, with the learned Tribunal, shall stand released to the appellant along with interest accrued thereon.

37. As the accident had taken place on 20.01.2013 and more than 10 years have already passed with the claimants not receiving any amount as compensation, I direct the entire compensation amount as re-determined in terms of the present judgement, along with interest accrued thereon, be released in favour of the claimants, in the proportion as stipulated in the Impugned Award.

38. The appeals and the pending applications are disposed of in the above terms.

39. The statutory amount(s) deposited by the appellant be released to the appellant along with interest accrued thereon. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 16, 2023/Arya/rp

